HONOURABLE SRI JUSTICE B. PRAKASH RAO

AND

HONOURABLE SRI JUSTICE G. BHAVANI PRASAD

W.P.No.5542 of 2006

DATE: 14.08.2006

Between:

The Divisional Forest Officer, Nirmal, Adilabad District and 6 others

.... Petitioners

And:

D. Kishan Swamy, Retd. Forest Range Officer, Flat No.G-I, Raghava Towers, Bhagyanagar Colony, Kukatpally, Hyderabad

....Respondent

ORDER: (Per. Hon'ble Sri Justice B. Prakash Rao)

Heard the learned Government Pleader for Services-I appearing on behalf of the petitioners and Sri M. Hanumantha Rao, learned counsel for the respondent.

Being dissatisfied with the order dated 18.8.2005 in O.A.No.528 of 2005 on the file of Andhra Pradesh Administrative Tribunal, Hyderabad, the respondents-writ petitioners filed the present writ petition seeking a Writ of Certiorari to set aside the said order.

The brief facts of the case that are necessary for disposal of the writ petition are that the respondent herein, who was a retired Forest

Range Officer, is the applicant before the Tribunal, who filed O.A. under Section 19 of the Administrative Tribunals Act, 1985, challenging the charges framed by first respondent therein dated 25.2.1995 as well as fresh charge memo dated 25.10.2003 issued against him on the premise that first respondent, who issued the charges, is neither Appointing Authority nor Disciplinary Authority and he has no competence to issue charge memo. Before the Tribunal, the applicant contended that the charge memo said to have been issued against him relates to the incident, which is more than four years old prior to the date of issuance of the charge memo and no such charge has been made out especially after his retirement on 31.7.1998 and the documents of the case relate back to the incident.

Initially, as the applicant is alleged to have committed certain irregularities while discharging his duties at Mutyampet, during the period from 4.12.1992 to 12.5.1995, the second respondent had appointed the Divisional Forest Officer-the first respondent therein as an Inquiry Officer to hold an inquiry in respect of the said irregularities against the applicant and other two delinquent officers. The first respondent therein after completion of inquiry imposed punishment in respect of two delinquent officers, but in so far as the applicant is concerned, a report was submitted on 30.7.1998 to the second respondent therein, the Conservator of Forests. By the time, the report was submitted by first respondent, the applicant was retired from service on 31.7.1998 on attaining the age of superannuation. The second respondent made a reference to the Principal Chief Conservator of Forests (3rd respondent therein), who in turn made a reference to the Principal Secretary to Government (4th respondent therein) to take further action vide his letter dated 27.1.2001. The Government, having not accepted the said findings, requested the third respondent to examine the case under Rule 9 of A.P. Revised Pension Rules, 1980 and send the proposals. Consequently, a fresh Charge memo has been issued on 25.10.2003 against the applicant. The

Tribunal, after careful consideration of the case, rendered the impugned order holding the said charge memo to be not sustainable in law as the said charge memo issued nearly after a lapse of 11 years earlier to the date of occurrence, that too, after retirement of the applicant. Challenging the said order, the writ petitioners came up with this writ petition.

Having heard the learned Government Pleader for Services-I and also the learned counsel for the respondent, the only question that arises for consideration in this writ petition is as to whether the fresh charge memo issued on 25.10.2003 by the Principal Chief Conservator of Forests, which is impugned before Tribunal, is sustainable in law?

There is no serious dispute with regard to certain irregularities alleged to have been committed by the respondent herein, which lead to issuance of a fresh charge memo dated 25.10.2003 and also the earlier disciplinary proceedings which culminated into filing of report dated 25.2.1995 and also the retirement of the respondent on 31.7.1998.

However, a thorough reading of Rule 9 (2) (b) of the Andhra Pradesh Revised Pension Rules, 1980, makes it clear that the departmental proceedings shall not be instituted without sanction from Government in respect of a retired Government employee and shall not be in respect of any event which took place more than four years before such institution.

In the case on hand, there was no such sanction from the Government while initiating disciplinary proceedings against the respondent. Further, the Divisional Forest Officer, who was appointed as Inquiry Officer in the year 1995, is not competent authority to issue charge memo against the respondent herein in as much as he is other than the disciplinary authority or the appointing authority and if any

order is issued in violation of the statutory rules, the same becomes void abinitio. Therefore, the charge memo issued against the respondent is not only contrary to the statutory rules but also obviously lacks competence in issuing the said charge memo in the circumstances of this case where the applicant has already retired from service. Therefore, the Tribunal has rightly held the charge memo issued against the respondent to be void abinitio. Hence, we do not find any justification to interfere with the order of Tribunal and the writ petition is totally devoid of merits and is liable to be dismissed.

Accordingly, the writ petition is dismissed. No costs.

However, it is made clear that the directions given by the Tribunal as to the release of the pension as well as the adjustment of the of Rs.21,232/-, needs no interference.

B. PRAKASH RAO, J

G. BHAVANI PRASAD, J

Date: 14.08.2006

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